

ARTICLE 29 WORKING PARTY – NOVEMBER 2017 PLENARY MEETING

First annual Joint Review of the Privacy Shield

According to the EU–U.S. Privacy Shield adequacy decision (“Privacy Shield”)¹ adopted on 12 July 2016, eight representatives of the WP29 participated in the first joint review conducted by the European Commission, on September 18 and 19, 2017 in Washington DC to assess the robustness of the adequacy decision.

Based on the concerns elaborated in its previous opinions², in particular opinion 1/2016, the WP29 focused on the assessment of both the commercial aspects of the Privacy Shield and on the legal framework relating to government access to personal data transferred from the EU for the purposes of Law Enforcement and National Security, including the legal remedies available to EU citizens. The WP29 assessed whether their concerns have been resolved and also whether the safeguards provided under the EU-U.S. Privacy Shield are workable and effective.

The WP29’s **main findings and assessments** of this joint annual review **are presented in a report**, separate from the European Commission’s report on the first annual review of the functioning of the EU–U.S. Privacy Shield³.

The WP29 acknowledges the **progress of the Privacy Shield in comparison with the invalidated Safe Harbor Decision**. The WP29 recognizes the efforts made by the U.S. authorities and the Commission to implement the Privacy Shield. To complement these efforts, the WP29 will engage in advising the U.S. authorities in drafting new guidance, in particular regarding HR data and onward transfers, in order to develop a common understanding of the Privacy Shield Principles and to address the needs of the business community on both sides of the Atlantic.

However, **the WP29 has identified a number of significant concerns that need to be addressed by both the Commission and the U.S. authorities. Therefore the WP29 calls upon the Commission and the U.S. competent authorities to restart discussions. An action plan has to be set up immediately** in order to demonstrate that all these concerns will be addressed. In particular **the appointment of an independent Ombudsperson should be prioritized and the rules of procedure be further explained including by declassification. PCLOB members as well should be appointed. Those prioritized concerns need to be resolved by 25 May 2018.**

¹ Commission Implementing Decision (EU) 2016/1250 of 12 July 2016 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequacy of the protection provided by the EU-U.S. Privacy Shield, OJ L 207, 1.8.2016, p.1.

² WP 237 and WP238

³ REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the first annual review of the functioning of the EU–U.S. Privacy Shield; COMMISSION STAFF WORKING DOCUMENT Accompanying the document REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the first annual review of the functioning of the EU–U.S. Privacy Shield {COM(2017) 611 final, Brussels, 18.10.2017 SWD(2017) 344 final

The WP29 expects **the remaining concerns raised in the report to be addressed at the latest at the second joint review.**

In case no remedy is brought to the concerns of the WP29 in the given time frames, the members of WP29 will take appropriate action, including bringing the Privacy Shield Adequacy decision to national courts for them to make a reference to the CJEU for a preliminary ruling.